

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

HAWTHORN BANK AND HAWTHORN REAL ESTATE, LLC.,

Respondents

v.

F.A.L. INVESTMENTS, LLC, (SUCCESSOR TO GREEN AND SAMSON, LLC), JERRY GREEN, MELODY GREEN, RICHARD L. SAMSON, INDIVIDUALLY AND AS TRUSTEE OF THE RICHARD L. SAMSON REVOCABLE LIVING TRUST U/AD AND JANET SAMSON.

Appellants

DOCKET NUMBER WD77057 and WD77145

DATE: September 16, 2014

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Michael Berry, Jefferson City, MO
Marshall Wilson, Jefferson City, MO

Counsel for Appellants
Co-Counsel for Appellants

Attorneys:

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Counsel for Respondents
Co-Counsel for Respondents

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**HAWTHORN BANK AND HAWTHORN REAL ESTATE, LLC., Respondents, v.
F.A.L. INVESTMENTS, LLC, (SUCCESSOR TO GREEN AND SAMSON, LLC),
JERRY GREEN, MELODY GREEN, RICHARD L. SAMSON, INDIVIDUALLY
AND AS TRUSTEE OF THE RICHARD L. SAMSON REVOCABLE LIVING
TRUST U/AD AND JANET SAMSON, Appellants**

WD77057 and WD77145

Cole County

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

Jerry and Melody Green, *et al.*, ("Appellants") appeal the circuit court's judgment in favor of Hawthorn Bank and Hawthorn Real Estate, LLC ("Hawthorn") on Hawthorn's petition seeking a declaration that it was not required to execute and deliver a full deed of release on certain property ("Property") that the Appellants had contracted to sell for less than the amount of debt secured by it. The circuit court held that the sale of the Property for considerably less than its fair market value to a company primarily owned by Green violated the implied covenant of good faith and fair dealing; that the "due on sale" clause in the Deed of Trust required Appellants to pay the entire debt secured by the Property; and that Hawthorn was entitled to enforce its rights under the various loan instruments and foreclose on the Deed of Trust.

Affirmed.

Division Two holds:

The circuit court did not err in concluding that the Appellants' attempt to sell the Property to an entity that Green controlled, at a price significantly below fair market value, was an "attempt to circumvent its contractual obligations" and, therefore, violated the "implied covenant of good faith" that is a part of all contracts in Missouri. The circuit court did not err in rejecting the Appellants' contention that the amount due Hawthorn from the sale of the Property was governed *not* by the Deed of Trust, but by the parties' Loan Agreement (which the Appellants claimed entitled Hawthorn to no more than the amount of the purported sale). Nor did the circuit court err in its judgment with respect to the "merger doctrine," the "parol evidence rule," the "statute of frauds," or Missouri's usury laws, as alleged by the Appellants. The circuit court's judgment is affirmed in all respects.

Opinion by James Edward Welsh, Judge

September 16, 2014

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